STATE OF MICHIGAN

COURT OF APPEALS

REBECCA P. BIERI,

Plaintiff-Appellant,

v

LINE INVESTMENTS, LLC,

Defendant-Appellee.

UNPUBLISHED
October 26, 2004

No. 248410
Oakland Circuit Court
LC No. 2002-038450-NO

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a veterinary technician at an emergency clinic located in a mall owned by defendant, sustained injuries when she fell on an ice and snow-covered service drive while walking a dog behind the clinic. She filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition, concluding that defendant owed no duty to plaintiff because the danger presented by the ice and snow was open and obvious, and was not unreasonably dangerous in spite of its open and obvious condition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). This duty does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Id.*

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition

make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Id.*

As a general rule, and absent special circumstances, the hazards presented by ice and snow are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under the circumstances an average person with ordinary intelligence would have been able to discover the condition and the risk it presented. *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Here, plaintiff acknowledged that light snow fell on the day of the incident, and that she recognized the danger of falling on ice and snow. The trial court correctly found that the danger presented by the presence of ice and snow behind the building was open and obvious. *Corey, supra* at 6.

Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. Contrary to plaintiff's assertion, the danger presented by the presence of ice and snow on the service drive was not unavoidable. Plaintiff could have taken the dog into a dog run located across the service drive from the building. A small snow bank was present in front of the entrance to the dog run, but it had been packed down by other users. This condition was not so unreasonably dangerous that it created a risk of death or severe injury.[1] *Id.* at 6-7 (falling several feet down ice-covered steps does not meet *Lugo* standard for unreasonable danger). Summary disposition was properly granted.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

[1] This conclusion is reasonable notwithstanding the fact that plaintiff suffered a more severe injury than might be anticipated under the circumstances.